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WASHINGTON DC 20004

In re Application of	:	
NOJO et al.	:	
Application No.: 10/534,699	:	DECISION
PCT No.: PCT/US2003/036618	:	
Int. Filing Date: 13 November 2003	:	
Priority Date: 13 November 2002	:	
Attorney's Docket No.: 063254-0233-US	:	
For: CHEMICAL MECHANICAL POLISHING	:	
COMPOSITION AND PROCESS	:	

This decision is in response to applicants' renewed petition under 37 CFR 1.137(b) and applicants' request for waiver of the petition fee under 37 CFR 1.137(b), both filed 22 January 2009 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 13 November 2003, applicants filed international application PCT/US2003/036618, which designated the U.S. and claimed a priority date of 13 November 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 27 May 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 13 May 2005.

On 13 May 2005, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 09 November 2007, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of inventors in compliance with 37 CFR 1.497(a)-(b) was required.

On 13 August 2008, the USPTO mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned as to the United States for failure to respond to the NOTIFICATION OF MISSING REQUIREMENTS mailed 09 November 2007 within the time period set therein.

On 04 November 2008, applicants filed a petition under 37 CFR 1.137(b) which was accompanied by, *inter alia*, a declaration of inventors, and a request to waive the fee required for a petition under 37 CFR 1.137(b).

On 30 December 2008, a decision was mailed dismissing without prejudice applicants' petition under 37 CFR 1.137(b) for failure provide the required reply—a proper declaration of inventors. The declaration of inventors filed 04 November 2008 was an improper composite declaration. The decision also indicated that a request for waiver of the petition fee must be accompanied by the petition fee set forth in 37 CFR 1.17(f).

On 22 January 2009, applicants filed the instant renewed petition under 37 CFR 1.137(b) which was accompanied by a declaration of inventors. The submission also included the petition fee set forth in 37 CFR 1.17(f) and a request to waive the petition fee required under 37 CFR 1.137(b).

DISCUSSION

Petition Under 37 CFR 1.137(b)

A petition to revive the present application under 37 CFR 1.137(b) must include:

- (1) The required reply;
- (2) The petition fee;
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

Item (1) has now been satisfied.

As to item (2), applicant submitted the petition fee on 04 November 2008.

As to item (3), the required statement has been provided.

Declaration of Inventors

The declaration of inventors filed 22 January 2009 is in compliance with 37 CFR 1.497(a)-(b).

Request for Waiver of Petition Fee Required Under 37 CFR 1.137(b)

A requirement of the regulations which is not a requirement of the statutes, may be waived in an extraordinary situation, where justice requires. 37 CFR 1.183. Here, applicants request waiver of the petition fee under 37 CFR 1.137(b) because it is purported that applicants did not receive the NOTIFICATION OF MISSING REQUIREMENTS mailed 09 November 2007. However, failure to receive a paper is not an extraordinary situation under 37 CFR 1.183. See, e.g., MPEP § 711.03(c), para. I.A. (It is noted that applicants suspect that the correspondence may have been redirected (page 3 of petition filed 04 November 2008), which is not the same as having been lost in the mail. It is also noted that a petition which has been granted will not be reconsidered on a different basis.)

CONCLUSION

The petition under 37 CFR 1.137(b) is GRANTED for the reasons set forth above.

The petition under 37 CFR 1.183 is DISMISSED for the reasons set forth above.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application.

/Daniel Stemmer/

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